

REMARKS

In the Office Action of March 21, 2006, the Examiner again rejected claims 1-2, 4-8 and 10-22 under 35 USC §103(a) as being unpatentable over the Kessler '618 application in view of the De La Motte '318 application.

By the present response, the applicant has amended independent claims 1, 7 and 13 to more specifically define the invention over the combination of references cited by the Examiner. Reconsideration of the claim rejections in view of the claim amendments, as well as in view of the arguments for allowance set forth below are respectfully requested.

Prior Art Summary

The Kessler '618 application cited by the Examiner in the Office Action is directed to a health care payment and compliance system that allows a provider 104, such as a hospital, to communicate with an application service provider (ASP) 120 through a network 108. In addition to the provider 104, a third party payor 106, such as an insurance company, can also communicate with the ASP through the network 108.

In the Kessler '618 reference, a request for a device is submitted to the ASP 120 by the provider 104. A database within the ASP determines whether the submitted request is authorized by the beneficiary's insurance coverage. If the beneficiary is covered by the health plan, the provider 104 is informed that the medical benefit, product or service can be provided to the beneficiary. As stated in paragraph [0121] of the Kessler '618 reference, the provider 104 will automatically bill the third party payor 106 for the health care provided to the beneficiary. Thus, the system of the Kessler '618 application is directed to an electronic communication system between the beneficiary, provider and third party payor through a central network utilizing an ASP. However, the Kessler '618 application does not teach or suggest modifying the billing and payment steps that occur between the provider (health care facility) 104 and the third party payor (insurance company) 106. Instead, the Kessler '618 application simply teaches a communication and

authorization system that allows the provider to receive authorization without having to contact the third party payor directly.

The De La Motte '318 reference cited by the Examiner is a system for facilitating transactions involving related goods and services. The De La Motte '318 reference teaches a trading network that allows buyers and suppliers to negotiate with each other for the sale of goods and services. The transaction facilitator 102 includes multiple databases 115 that include various products from a network of suppliers 106. If a buyer 104 is interested in obtaining products from a supplier, the buyer 104 can submit a request for quote (RFQ) to the transaction facilitator 102. Once the RFQ is posted on the transaction facilitator 102, the RFQ can either be accessed by the supplier 106 over the network 114 or can be sent directly to the supplier 106 using conventional transmission techniques, such as fax, mail, hand delivery, etc.

Based upon the RFQ, the supplier creates a bid that is then sent to the buyer using conventional transmission techniques, such as fax, mail or hand delivery (see paragraph [0043]). As described in paragraph [0049], once the buyer accepts the suppliers bid, the buyer can use a database of standard legal forms, purchase orders, invoices, shipping labels available on the transaction facilitator to complete the transaction. Although the buyer can use these forms available on the transaction facilitator, the buyer must review, edit and create the purchase order which is then sent from the buyer to the supplier. The purchase order from the buyer to the supplier can be sent electronically through the transaction facilitator, by mail, fax, hand delivery or other delivery techniques. However, the buyer must create the purchase order which is sent directly to the supplier. Thus, the transaction facilitator does not directly bill the supplier or receive payment from the buyer as part of the completed transaction. Instead, the order is received by the supplier from the buyer, the product is delivered directly from the supplier to the buyer and payment is received directly from the buyer back to the supplier.

In the De La Motte '318 reference, the transaction facilitator does not order products, control billing, receive payments, issue invoices, or otherwise participate in the

transaction between the buyer and seller. Instead, the transaction facilitator simply provides a convenient and efficient means of communication between multiple buyers and sellers to facilitate the transaction between the two separate parties.

Claims 1-2, 4-6 and 21

By the present response, independent claim 1 has been amended to more specifically state that the transaction facilitator contacts the manufacturer to order the device without additional input from the health care facility. Instead, the transaction facilitator utilizes the request for the device from the health care facility to contact the manufacturer without involving the health care facility in the ordering process. Further, claim 1 has been amended to indicate that the manufacturer delivers the device to the health care facility without generating a bill for the device to the health care facility. Instead, a cost claim for the device is issued from the transaction facilitator to the third party payor. The transaction facilitator receives payment from the third party payor and transfers the funds to the manufacturer without ever involving the health care facility. Thus, the transaction facilitator eliminates the requirement of the health care facility actually ordering the device from the manufacturer and eliminates the health care facility from the billing and payment cycle for the cost of the device. By utilizing a transaction facilitator to order and bill for the device, the method of claim 1 reduces the required functions for the health care facility, thereby reducing the overall cost of the device and accelerating payment for the device to the manufacturer.

In rejecting claim 1, the Examiner stated that the De La Motte '318 reference taught a step in which the transaction facilitator generates a cost claim (invoice) for the device. For this finding, the Examiner referred to paragraph [0049] of the De La Motte '318 reference.

It is the applicant's belief that the Examiner has mischaracterized the teaching of the De La Motte '318 application. Specifically, in paragraph [0049], the De La Motte '318 reference teaches that the transaction facilitator includes a database of standard legal forms, purchase orders, invoices, shipping labels, etc. that the buyers and sellers can use

Appln. No. 09/883,557
Amdt. dated September 21, 2006
Reply to Office Action of March 21, 2006

to complete the transaction. As specifically stated, the buyer can access the database such that the buyer can create a purchase order that the transaction facilitator then sends to the buyer. The buyer then edits the purchase order and the buyer sends the purchase order to the supplier utilizing conventional communication techniques, such as mail, fax or electronic transmission through the transaction facilitator. However, the De La Motte '318 reference clearly teaches that the buyer directly orders the device through a purchase order sent to the supplier.

As required by amended independent claim 1, the health care facility does not directly contact the manufacturer. Instead, the transaction facilitator, without any additional input from the health care facility, contacts the manufacturer to order the device. This step is not taught or suggested, nor rendered obvious by the De La Motte '318 reference.

Further, amended independent claim 1 requires the manufacturer to deliver the device to the health care facility without billing the health care facility.

In the De La Motte '318 reference, once the supplier receives the purchase order directly from the buyer, the supplier delivers the products directly to the buyer. The De La Motte '318 reference provides no teaching or suggestion of the transaction facilitator generating a cost claim to a third party payor or any other party associated with the transaction. Instead, the De La Motte '318 reference contemplates the direct billing and payment between the buyer and seller without involving the transaction facilitator. As described in paragraph [0051], the De La Motte '318 reference specifically contemplates that the buyer or seller are able to save on typical mark-up applied when the services are arranged through one or more intermediaries. Thus, the De La Motte '318 reference does not teach or suggest, nor render obvious, the steps of receiving payment at the transaction facilitator and transferring funds from the transaction facilitator to the manufacturer for payment of the device.

Appln. No. 09/883,557
Amdt. dated September 21, 2006
Reply to Office Action of March 21, 2006

In the Examiner's comments regarding the applicant's arguments filed on January 14, 2005, the Examiner stated that it was his opinion that the De La Motte reference taught the exchange of documentation between the buyer and seller and that a combination of the De La Motte reference with the Kessler reference would suggest utilizing the transaction facilitator to exchange purchase orders, bills, checks and claims between the provider (health care facility) and third party payor (insurance company). However, as independent claim 1 requires, the method is not simply directed to a method of exchanging information, such as invoices, purchase orders, bills and checks between buyers and sellers, but is instead directed to a method that utilizes the transaction facilitator to eliminate the "buyer" from the transaction such that the transaction facilitator generates a cost claim to the third party payor and receives payment from the third party payor without involving the health care facility. The elimination of the health care facility (buyer) from the financial transaction, including all of the payment and billing steps, is not taught or suggested, nor rendered obvious, by the combination of references cited by the Examiner.

Based upon the present amendment, claim 1 is believed to be allowable over the combination of references cited by the Examiner. Claims 2, 4-6 and 21 depend directly or indirectly from claim 1 and are believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

Claims 7-8, 10-12 and 22

Independent claim 7 has been amended generally along the lines of independent claim 1. Thus, the above arguments for allowance with respect to independent claim 1 apply to the subject matter of independent claim 7.

Specifically, independent claim 7 teaches a method in which the transaction facilitator electronically contacts the manufacturer for a medical device to order the medical device without additional input from the health care facility. The manufacturer delivers the medical device to the health care facility without billing the health care

Appln. No. 09/883,557
Amdt. dated September 21, 2006
Reply to Office Action of March 21, 2006

facility. The transaction facilitator further generates a claim for the medical device to the insurance provider and receives payment for the claim from the insurance provider without involving the health care facility. Once the payment is received, the funds are transferred from the transaction facilitator to the device manufacturer, again without involving the health care facility.

The combination of references cited by the Examiner, and specifically the De La Motte '318 publication, provide no teaching or suggestion of utilizing a transaction facilitator to directly contact a manufacturer for a medical device to order the medical device without additional input from the health care facility. Further, the combination of references do not teach or suggest generating a claim for the medical device directly from the transaction facilitator to the insurance provider without the medical device manufacturer ever directly billing the health care facility. Thus, independent claim 7 is believed to be in condition for allowance.

Claims 8, 10-12 and 22 depend directly or indirectly from claim 7 and are believed to be allowable based upon the above arguments for allowance as well as in view of the subject matter of each claim.

Claims 13-20

Independent claim 13 of the present application was also rejected based upon the combination of the De La Motte and Kessler references. By the present amendment, claim 13 has been amended generally along the same lines as independent claim 1 and 7 and is believed to be allowable for the same reasons set forth above. Specifically, claim 13 has been amended to indicate that the manufacturer delivers the device to the health care facility without billing the health care facility and that a claim for the device is generated from the transaction facilitator to the third party payor.

In the De La Motte '318 reference, the transaction facilitator does not generate a claim for the device to the third party payor. Instead, as set forth in paragraph [0049] of the De La Motte '318 reference, the transaction facilitator simply provides a medium for

Appln. No. 09/883,557
Amdt. dated September 21, 2006
Reply to Office Action of March 21, 2006

the exchange of purchase orders and invoices between the buyers and sellers of a product. Further, the De La Motte '318 reference clearly teaches that an invoice and purchase order are exchanged directly between the buyers and sellers, while amended independent claim 13 clearly requires the manufacturer (seller) to deliver the device to the health care facility (buyer) without billing the health care facility (buyer). Thus, the subject matter of independent claim 13 is not taught or suggested, nor rendered obvious, by the combination of references relied upon by the Examiner.

Claims 14-19 depend directly or indirectly from claim 13 and are believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

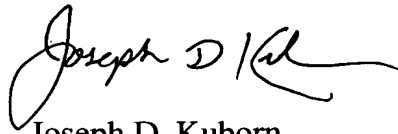
Conclusion

Based upon the above claim amendments and the above arguments for allowance, claims 1-2, 4-8 and 10-22 are believed to be in condition for allowance and such action is respectfully requested.

The Examiner is invited to contact the applicant's undersigned attorney with any questions or comments, or to otherwise facilitate prosecution of the present application.

Respectfully submitted,

ANDRUS, SCEALES, STARKE & SAWALL, LLP

A handwritten signature in black ink, appearing to read "Joseph D. Kuborn", with a stylized flourish at the end.

Joseph D. Kuborn
Reg. No. 40,689

100 East Wisconsin Avenue, Suite 1100
Milwaukee, Wisconsin 53202
Telephone No. (414) 271-7590
Attorney Docket No.: 4437-00002